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# Disclosure of Corporate Information to Trade Unions in North America

## La divulgation aux syndicats des renseignements sur l'activité des entreprises

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### Résumé de l'article

Des groupes de pression, comme les consommateurs et les syndicats, ont manifesté beaucoup d'intérêt pour tout ce qui touche à la divulgation de l'information en général. En matière de relations de travail, la nécessité d'informer le public est reconnue depuis fort longtemps. Mackenzie King en faisait état à la fin de la première guerre mondiale. À la fin de la décennie 1970, de nombreux syndicats ont fait des représentations aux gouvernements en ce sens. Ils se plaignaient qu'ils ne connaissent pas la situation financière des entreprises non plus qu'ils ne pouvaient être assurés de la véracité des statistiques publiées relativement aux profits et à la productivité.

Le but de l'article, si l'on admet qu'il n'y a que très peu de renseignements fournis aux syndicats par les entreprises en Amérique du Nord, et encore moins au Canada, est de combler ce vide en étudiant la législation et les pratiques des entreprises relativement à la divulgation de l'information, en énonçant les arguments favorables ou opposés à la divulgation, en exposant les problèmes que de telles mesures soulèvent, en faisant valoir la nécessité pour les entreprises d'avoir une politique en cette matière et en indiquant les initiatives possibles de la part des gouvernements.

L'intérêt pour cette question ressort d'abord de la crainte ressentie par les syndicats face à la tendance à la concentration des pouvoirs économiques des entreprises entre les mains des multinationales alors que le gouvernement a failli à la tâche d'obliger ces entreprises à répondre des décisions qui peuvent avoir un effet néfaste sur l'emploi et l'économie canadienne dans son ensemble. Il ressort aussi de l'expérience passée en matière des mises à pied et de réduction de personnel. Aussi, les syndicats souhaiteraient-ils avoir une information systématique au sujet des changements projetés dans la main-d'œuvre de manière à pouvoir influencer les décisions administratives. Les changements technologiques, l'automatisation, les déplacements de production d'une usine à l'autre, les transferts de propriétés sont autant de transformations qui peuvent avoir une influence profonde sur la vie personnelle des travailleurs.

D'une façon générale, la divulgation de l'information est perçue tant par les syndicats que les employeurs, comme un outil destiné à renforcer leur pouvoir de négociation. Il ne s'agit pas tant de savoir si l'information devrait jouer un rôle dans la négociation collective que de vouloir pour toutes les parties un accès égal à l'information. Pour les syndicats, la divulgation veut dire que les employeurs possèdent certains renseignements qu'ils ne connaissent pas et concernant lesquels ils voudraient obtenir des explications. Le Congrès du travail du Canada a identifié plusieurs catégories de renseignements qu'il estime nécessaires aux syndicats comme le statut de l'entreprise, sa situation de concurrent sur les marchés, sa production et sa productivité, sa structure financière, son budget, ses profits pour l'avenir, son organigramme, etc., mais ce n'est pas tant l'abondance des données qui compte que les renseignements utiles à la négociation et à l'administration des conventions collectives.

Jusqu'ici, au Canada, la divulgation d'informations imposée aux entreprises a eu principalement pour objet de permettre aux actionnaires et au public de prendre des décisions sages dans le domaine des investissements, mais cette législation ne s'applique pas aux compagnies privées qui forment tout de même le quart de toutes les entreprises importantes du pays. Aucune loi, par ailleurs, n'impose aux employeurs l'obligation de renseigner les syndicats, si ce n'est par le biais de l'obligation de négocier de bonne foi. Aux États-Unis, on a interprété la loi de façon que le refus d'informer les syndicats était considéré comme une violation de cet impératif législatif, mais il s'ensuit que les entreprises, qui sont financièrement faibles, s'efforcent d'ouvrir leurs livres et servent ainsi leurs causes, tandis que les compagnies financièrement fortes ne crient pas à la pauvreté et elles échappent à l'obligation d'ouvrir leurs livres.

Il en va autrement au Canada. Le *Code canadien du travail* stipule bien que tout employeur doit fournir au Ministre du travail les renseignements se rapportant aux salaires de ses employés, à leur horaire de travail, aux congés et aux vacances. D'autre part, dans les législations des provinces, il est prescrit que les employeurs et les syndicats doivent négocier de bonne foi, mais, on a été jusqu'ici incapable de définir exactement le sens de "bonne foi". Aucun tribunal canadien n'a encore eu la témérité d'éprouver la conduite d'un employeur en quantifiant l'offre salariale.

Même si l'information fournie aux actionnaires peut être utile aux syndicats, ce n'est pas toujours de ce genre de renseignements dont ils ont besoin. En règle générale, cette information n'est pas assez détaillée; elle fournit surtout des indications sur le passé de l'entreprise, mais elle ne contient que peu de choses touchant son développement et ses projets pour l'avenir.

S'il y a, par ailleurs, des arguments favorables à une certaine diffusion de l'information aux syndicats, d'autres arguments militent au contraire. Et ceci s'applique tant aux employeurs qu'aux syndicats. À une époque où la libre entreprise est fortement attaquée, il peut y avoir avantage pour les employeurs à la faire connaître mieux et plus profondément à leurs salariés et au public en général, de faire ressortir la complexité des tâches qu'il lui faut assumer ainsi que le rôle qu'elle joue dans la vie sociale. De plus, pour les employeurs, la divulgation de certains renseignements aux syndicats peut favoriser l'entente et la compréhension, clarifier les objectifs de la négociation. Elle permet encore d'exposer publiquement les projets relatifs à l'amélioration de la qualité de la vie en milieu de travail. Quant aux dirigeants syndicaux, ils estiment qu'une diffusion plus complète de renseignements de nature financière ou autre est nécessaire à une négociation collective objective et rationnelle. En résumé, les employeurs considèrent que la diffusion de l'information est de nature à influencer le comportement des salariés, à modérer leurs exigences. Pour leur part, les syndicats pensent qu'une meilleure information permettrait de redresser la balance du pouvoir en faisant des partenaires égaux.

Toutefois, tout le monde est loin de partager ce point de vue optimiste. Pour certains spécialistes des relations professionnelles, les questions financières et économiques n'ont que peu d'influence sur le déroulement des négociations. Tandis que pour d'autres, la diffusion de renseignements donnerait un pouvoir de négociation trop considérable aux syndicats. Nombre d'employeurs croient que les négociateurs syndicaux manquent de l'expérience et de l'entraînement nécessaires pour bien interpréter les questions de comptabilité et de finance. Ils craignent aussi que la divulgation de renseignements d'ordre économique et financier mette en danger la position concurrentielle de l'entreprise et même son existence.

En résumé, on voit que les syndicats et les employeurs, même lorsqu'ils sont d'accord sur la nécessité de diffuser de l'information, recherchent des fins différentes sinon opposées. C'est pourquoi il faut tenir à la fois compte du comportement des parties, du caractère confidentiel de certains faits ou de certaines données, du choix de l'information, de sa préparation, de sa présentation, de l'utilisation que l'on peut en faire, des personnes à qui elle doit être divulguée, des fins auxquelles elle peut servir.

Comme certaines entreprises diffusent volontairement des renseignements à leurs employés et aux représentants syndicaux, il serait utile et intéressant de négocier des ententes à ce sujet. Ces accords pourraient porter sur les points suivants: la liste des renseignements à donner, le moment où ils devraient être fournis, le niveau de l'entreprise qui se chargerait de la diffusion, la fréquence de l'information, le type de renseignements qu'on garderait confidentiels, la mise en place d'un mécanisme qui permettrait de régler les différends en cette matière.

De leur côté, les gouvernements devraient prendre certaines initiatives législatives et rendre obligatoires des mesures qui obligeraient les employeurs à fournir aux syndicats et à leurs représentants certaines informations utiles dans la négociation collective.

On peut conclure que, d'une façon générale, les syndicats favorisent une plus grande diffusion de l'information et que cela serait de nature à améliorer les relations professionnelles. Les employeurs se montrent beaucoup plus réticents. L'expérience des pays européens indique qu'il ne suffit pas d'adopter des lois cependant. Mieux vaut que la diffusion de l'information se fasse sur une base volontaire. Aux employeurs, il importe de rappeler qu'une politique de divulgation de l'information ne saurait être efficace que dans la mesure où elle est perçue par les employés et leurs représentants comme le résultat de la consultation entre les deux partenaires. Aux syndicats, il s'impose de prendre les moyens nécessaires pour évaluer objectivement les renseignements dont ils disposent.

Trois conditions sont nécessaires pour qu'une telle politique réussisse: la divulgation doit se faire sur une base volontaire; il faut que la diffusion des renseignements soit établie à la suite de négociations entre les parties; il importe d'adopter certaines dispositions législatives qui mettent à la portée des syndicats les renseignements déjà disponibles.

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# Disclosure of Corporate Information to Trade Unions in North America

Hem C. Jain

*The focus of this paper is on the information disclosed by companies in the private sector to trade unions in North America, with particular reference to Canada.*

In recent years governments and corporations have come under great pressure to provide information about their activities. Well organized interest groups in North America, such as consumers and trade unions have shown a great deal of interest in the concept of "disclosure of information". Ralph Nader, the American consumer advocate, described information as "the currency of democracy... the citizen's method of truly participating in the democratic procedure". The United States Congress passed the *Freedom of Information Act* (FOIA) in 1976. The rationale of the act is that the public has the right to know the workings of its governmental bodies. The FOIA requires full disclosure of government agencies' documents unless specifically excluded by one of its nine statutory exemptions. In Canada, the minority Conservative government presented a similar bill in Parliament in 1979.

As far as labour-management relations in Canada are concerned, the need to provide comprehensive information to the public at large in all matters relating to industrial disputes has been recognized since 1918, when Mackenzie King wrote that "the public has a right to be informed impartially on the merits of situations which threaten its well being." Mackenzie King laid a great deal of emphasis on compulsory investigation of all matters related to disputes, including profits, prices, costs, competition, comparative wages, and other terms and conditions of employment. He advocated that all findings be published in the *Labour Gazette*. He believed that "for public opinion to be effective, it is necessary that it be made informed opinion"<sup>1</sup>.

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\*\* Financial support for this study was provided by the Canada Department of Labour and the University of New Brunswick.

<sup>1</sup> MACKENZIE KING, W.L., *Industry and Humanity*, Cambridge, Houghton Mifflin, the University Press, 1918, p. 518.

In the late 1970's a number of unions and staff associations made both formal and informal representations to the Canada Department of Labour concerning the inadequate state of corporate disclosure<sup>2</sup>. Some union leaders complain that in most bargaining situations they "don't know what the real financial status of the employer is, nor do they know which (if any) of the conflicting figures published on profits and productivity are accurate"<sup>3</sup>. The following statement issued by the Canadian Labour Congress (CLC) is indicative of the importance the Canadian labour movement attaches to the disclosure of corporate information:

"If trade unions are to successfully challenge corporate power; if trade unions are to add to their power, influence and knowledge; if trade unions are to promote social and economic planning; if trade unions are to protect their members through collective bargaining; and if corporations are ever to be held accountable for their actions; greater disclosure of corporate financing, investment, pricing policies and production-planning are absolutely essential."<sup>4</sup>

### **Purpose of the Study**

There is very little material published on the information disclosed by companies in North America to trade unions. This paper is an attempt to fill this vacuum. The focus is on the information disclosed by companies in the private sector to trade unions in North America, with particular reference to Canada. To be more specific, this paper sets out to examine the following:

1. Legislation and corporate practices pertaining to the disclosure of information.
2. Arguments for and against disclosure.
3. Problems of practical application: lessons from the European experience.
4. Need for a company policy on the disclosure of information.
5. Possible government initiatives.

This paper is based on a review of the academic literature, official publications of unions, professional associations and employers' organizations, government reports and documents, and a survey of selected unions and employers' organizations in Canada.

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2 WOHLFARTH, Tony, "Corporate Disclosure and the Interest of Trade Unions" (a typewritten draft prepared for the Canada Department of Labour, Aug. 16, 1978), p. 1.

3 FINN, Ed, "Freedom of Information: Justice for Workers", *Civil Service Review*, Spring/Summer, 1977, p. 3.

4 "Corporate Disclosure", *Canada Labour*, June 1978, p. 35.

### Reasons for Recent Interest

The recent interest in additional disclosure of corporate information reflects the trade unions' growing anxiety over the pronounced trend toward corporate mergers, and the concentration of economic power in the hands of multinational companies. Trade unions have become painfully aware that over a period of time "a multinational may be able to alter the pattern of its international operations by building up some subsidiaries faster than others — a prospect that may be used to great effect at the bargaining table. For example, the Massey-Ferguson Company employed this tactic in 1968, when it threatened to concentrate its future expansion overseas if Canadian workers continued to pursue demands for equal pay with this U.S. counterparts."<sup>5</sup> This anxiety is accompanied by a feeling that the Canadian government has failed to make large corporations accountable for decisions which might have an adverse effect on employment and the Canadian economy as a whole. Trade unions believe that "the answer to the large corporations is not to break them up but to make them accountable for their private decisions to a wider public than just the shareholders and other investors."<sup>6</sup>

Another major reason for the increased interest in disclosure of information has been past experience with layoffs and redundancies. Technological changes, automation, shifting of production from one plant to another the take advantage of government subsidies or closeness to markets, as well as ownership transfer of companies, are all important contributory factors to the rising rate of redundancies and layoffs. Trade unions would like to receive systematic information on all these issues and would like to know the reasons behind any layoffs or reduction in the work force. They wish to be notified in advance of any contemplated changes in the labour force so that they can have an opportunity to influence management decisions concerning layoffs or reduction of the work force<sup>7</sup>.

Another reason for the interest in the corporate disclosure of information is the enactment of a considerable volume of legislation in Western

5 DAVIES, Robert, "Industrial Relations and the Multinational Corporation: An International Perspective", *Labour Gazette*, Nov. 1976, p. 577.

6 "Corporate Disclosure", *op. cit.*

7 Most European countries require that a company contemplating layoffs justify the reduction in the work force as well as give adequate advance notice to trade unions and workers' representatives through such bodies as works councils, thereby enabling them to enter into discussions with management and governments on the various issues involved and to find appropriate solutions in an attempt to mitigate the adverse effects on the work force. By contrast, workers in the U.S.A. enjoy very little protection of this kind unless it is negotiated by their union. In Canada, the Carrothers Commission, appointed by the federal government to inquire into redundancies and layoffs, recommended in a report dated September 1979 that management be obliged by law to give advance notice to employees of proposed changes.

European countries. A comparison between the North American labour legislation and that of Western European countries reveals that North America lags behind these countries with regard to corporate disclosure provisions<sup>8</sup>. In 1976, a significant development with regard to the provision of information to employee representatives was the publication of a set of voluntary guidelines for multinational companies by the Organization for Economic Cooperation and Development (OECD), of which Canada and the U.S.A. are both members<sup>9</sup>.

### Disclosure of Information Defined

Information is perceived by both trade unions and management as a potential tool for enhancing their power vis-à-vis each other in an industrial relations system. This power dimension is given recognition by the Commission on Industrial Relations in the United Kingdom in these words: "The question at issue is not whether information should play a role in collective bargaining, but whether both sides should have equal access to it."<sup>10</sup> To trade unions, "disclosure" means that employers have certain information which should be made available to them and that they should have the right to raise questions and demand explanations about the information and its implications. CLC has identified the following categories of information which it considers as needed by trade unions:

- a) the firm's status;
- b) its competitiveness in the market;
- c) its production and productivity;
- d) the firm's financial structure;
- e) budget and cost accounting;
- f) staff costs;
- g) the firm's program and outlook for the future;
- h) scientific research;
- i) all forms of public support received;
- j) the firm's organizational chart<sup>11</sup>.

The Canadian Labour Congress seems to emphasize a checklist approach, i.e., items to be disclosed on a purely quantitative basis. However,

<sup>8</sup> See Hem C. JAIN, "Information, Training and Effective Participation", *Industrial Relations Journal*, Vol. IX, No. 1, Spring 1978.

<sup>9</sup> Organization for Economic Cooperation and Development (OECD), "Declaration of 21st of June 1976 on International Investment and Multinational Enterprises", *Bulletin of Comparative Labour Relations*, Kluwer BV, Deventer, The Netherlands, VII, 1976, p. 353.

<sup>10</sup> Government of the United Kingdom, Commission for Industrial Relations, *Disclosure of Information*, H.M.S.O., London, 1971, Para. 91.

<sup>11</sup> "Corporate Disclosure", *op. cit.*, p. 39.

research on the disclosure of information to trade unions in the United Kingdom indicates that "extension of the provision of information that does not take into account the use of that information will help neither the workers nor, in the long run, the company."<sup>12</sup>

Company issued information is not just used by one individual union representative but also by a number of union functionaries involved in the negotiation and administration of the collective agreement: labour management consultative committees and participants in other forms of employee participation at plant and enterprise level. In order to perform their functions well and to achieve their goals, trade unions and their representatives need different categories, forms and presentation of company information. Furthermore, research on disclosure of company information in Western European countries<sup>13</sup> suggests that trade union representatives experience difficulties in understanding, evaluating, and using company information. They also face problems with regard to the completeness and objectivity of company information; the form in which it is presented; and its lack of specificity, particularly concerning the organizational level to which it refers within the company (plant, branch, division, etc.). The frequency with which information is released and its lack of regularity and consistency can also be sources of problems for union leaders. These problems will be explored in greater detail later in this paper.

## **LEGISLATION AND CORPORATE PRACTICES PERTAINING TO DISCLOSURE OF INFORMATION**

Legislation and corporate practices pertaining to disclosure of information in North America will be discussed under two broad headings:

1. Financial disclosure to shareholders and availability of this information to trade unions under certain circumstances.
2. Corporate disclosure directly to trade unions for collective bargaining and contract administration.

### **Financial Disclosure to Shareholders**

U.S.A.

It was not until 1900 that companies which listed their shares on the New York Stock Exchange were required to publish an annual report. In

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<sup>12</sup> Ruskin College, Oxford, Trade Union Research Unit, "The Acquisition and Use of Company Information by Trade Unions", Final Report, SSRC, 1977, p. 10.

<sup>13</sup> JAIN, Hem C., *op. cit.*

1902, U.S. Steel was the first company to publish "the premier" modern annual report. The United States Congress enacted the *Securities Act* in 1933 and the *Securities and Exchange Act* in 1934. These acts gave regulatory authority over financial reporting to the Securities and Exchange Commission (SEC). The SEC required that all firms operating in the U.S.A. provide detailed information about their business and legal activities annually on a 10-K form. Corporate management had an option to file the annual report in partial compliance with the financial disclosure requirements to be included in their 10-K forms. "Leading analysts consider the gap of information between the 10-K form reports and annual reports significant."<sup>14</sup>

In 1976, the SEC set up an advisory committee on corporate disclosure. The committee was charged to define the purpose and objectives of the corporate disclosure system, including an overall assessment of its effectiveness, and to compare its costs to the resulting benefits<sup>15</sup>. In 1977, the advisory committee, in its final report, recommended that "the Commission's function in the corporate disclosure system is to assure the public availability in an efficient and reasonable manner on a timely basis of reliable, firm-oriented information material to informed investment and corporate suffrage decision-making. The Commission should not adopt disclosure requirements which have as their principal objective the regulation of corporate conduct."<sup>16</sup>

Other recommendations of the advisory committee included:

1. Developing disclosure guides for specific industries (such as railroads, gas and electric utilities, air lines, etc.) to encourage uniformity of disclosure by companies in the same industry.
2. Developing a single integrated disclosure regulation with a "form CD" (coordinated) to cover all SEC forms and reports.
3. Making all company reports and documents filed with the SEC available to stockholders in addition to form 10-K.
4. Encouraging the disclosure of corporate forecasts<sup>17</sup>.

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<sup>14</sup> SINGHIVI, Surender S., "Corporate Management's Inclination to Disclose Financial Information", *Financial Analysts Journal*, July/August 1972, p. 67.

<sup>15</sup> See SEC release No. 33-55824 and also "SEC Commentary", in *C.P.A. Journal*, July 1977, pp. 54-56.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

In January 1980, the Securities and Exchange Commission proposed rules that would reduce the amount of information companies must file with the Commission but increase what they must tell shareholders. The new rules "would require companies to discuss in detail in their shareholder reports their financial conditions, touching on such matters as capital needs, liquidity and the impact of such economic trends as inflation."<sup>18</sup>

#### CANADA

The existing corporate disclosure legislation in Canada is also primarily oriented to the capital market, i.e., a company is required to provide necessary information to interested parties to enable them to make investment decisions. Such information is disclosed under a variety of corporation acts, securities legislation, and combines laws. Legislative authority for disclosure is shared between the federal and provincial governments: "The provincial governments have the legislative authority to incorporate, but in addition, have the constitutional power to compel disclosure from all companies wherever incorporated."<sup>19</sup>

As far as the federal legislation is concerned, the provisions for company disclosure fall under two main pieces of legislation: 1. The *Canada Business Corporations Act*; 2. The *Canada Corporations Act*. The information a company is required to disclose under these acts is similar to the provincial regulations. It is important to note, however, that present capital market disclosure provisions do not apply to the privately held companies. In Canada, over one quarter of the 100 largest firms are privately owned and managed and are not subject to disclosure legislation<sup>20</sup>.

A report on corporate disclosure prepared for the Royal Commission on Corporate Concentration describes the state of Canadian disclosure legislation as follows:

"Viewed as a whole, Canadian corporate disclosure is fragmented and uneven in its application. Corporations must comply with the requirements of one or more of eleven jurisdictions and in each what, when and where to disclose may differ depending upon a combination of factors such as the place of incorporation, the place where business is carried on, whether shares are publicly traded, the company's size, the activities in which it is engaged and the entitlement to special exemptions granted by local courts and securities commissions... The jurisdictional mix of pro-

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<sup>18</sup> "S.E.C. Proposes Rules to Decrease Amount of Data Firms Must File with the Agency", *The Wall Street Journal*, Jan. 11, 1980, p. 2.

<sup>19</sup> "Corporate Disclosure", *op. cit.*

<sup>20</sup> WAHLFARTH, Tony, *op. cit.*, p. 4.



vincial securities acts, provincial companies acts and the federal companies acts give rise to an inefficient duplication of government functions, and despite genuine efforts to promote uniformity, imposes multiple disclosure burdens on some firms while obscuring the public visibility of others that inhabit certain jurisdictional gaps.”<sup>21</sup>

Another act which applies both to corporation and trade unions is the *Corporation and Labour Unions Returns Administration* (CALURA). The disclosure implications of this act will be discussed later.

### **Disclosure of Company Information Directly to Trade Unions For Collective Bargaining and Contract Administration**

U.S.A.

Under the aegis of Section 8(a) (5) of the *Labour-Management Relations Act*, entitled “duty to bargain”, the National Labour Relations Board and the courts in the U.S.A. have fashioned a doctrine and have established a body of administrative regulations requiring the parties interested to disclose information relevant to the bargaining process. The rationale for the duty to supply information draws from the good faith bargaining requirements of the law.

Good faith in bargaining requires that the employer disclose to the representatives of his employees, upon request, sufficient relevant information to enable the representative to bargain intelligently on issues which may be raised in negotiations of a new contract or the administration of an existing contract. Furthermore, both parties should engage in a process of offers and counter-offers. A failure to supply information is considered as a violation of the “good faith” requirement of collective bargaining, and violators are guilty of unfair labour practices under Section 8(a) (5) of the *Labour-Management Relations Act*<sup>22</sup>.

As far as the disclosure to unions of data on productivity, efficiency, production costs, accounting practices, and pricing policies is concerned, Irving Bluestone, Vice-President of the U.A.W., has this to say:

“Pertinent information concerning the operation, profits, schedules of production are usually available to the union. The problem, however, is that much of this information, especially with regard to profits, production costs, accounting methods, pricing policies, etc. is required to be made available to the union only if

21 KAZANJIAN, J.A., “Corporate Disclosure”, a background report for the Royal Commission on Corporate Concentration, Study No. 18, Ottawa, 1977, p. 51.

22 U.S. Supreme Court, “National Labour Relations Board Versus Truit Manufacturing Co.”, *Cornell Law Review*, Vol. LVIII, Nov. 1972, pp. 23-50.

the company makes these matters part of the bargaining process by claiming a financial inability to meet the union's demands. Thus companies that are unprofitable and financially weak are often quick to disclose all the pertinent information since it helps their cause. Financially strong companies, however, do not cry poverty or an inability to meet the union's demands and thereby escape the obligation to open their books."<sup>23</sup>

#### CONTRACT ADMINISTRATION

Since the good faith bargaining requirement extends into the contract period, so the duty of an employer to provide sufficient relevant information to the union's bargaining agents continues throughout the life of the collective agreement. The National Labour Relations Board (NLRB) has cited many instances of wage information requests which have a "direct bearing" on the bargaining representative's ability to administer the contract and are thus considered presumptively relevant. Among the types of wage information having such a "direct bearing" on bargaining are 1) individual earnings 2) job rates and classifications 3) merit increases 4) pension data 5) incentive earnings 6) piece rates and 7) the operation of an incentive system<sup>24</sup>. In short, in the U.S.A., there exists a body of detailed administrative regulations which specify the employer's obligation to furnish sufficient relevant data to unions for the purpose of collective bargaining and contract administration.

#### CANADA

In Canada, the information required under the existing labour codes (federal and provincial) pertains to issues such as certification and appropriate bargaining units. As far as collective bargaining is concerned, section 66 of the *Canada Labour Code* states that "every employer shall furnish such information relating to the wages of his employees, their hours of work, and the general holidays, annual vacations, and conditions of work of his employees, and make such returns thereon from time to time as the Minister may require."

Labour laws in different Canadian jurisdictions require employers and unions to bargain in good faith, but precise definitions of either "good" or "bad faith" bargaining are missing from the labour legislation. Most

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<sup>23</sup> BLUESTONE, Irving, a speech at the International Seminar on Workers' Participation, Belgrade, 2-11 Dec. 1969, extracted from International Labour Organization (ILO), "Report on the Seminar", mimeographed, Geneva, 1969, p. 153.

<sup>24</sup> BARTOSIC, Florian and Roger C. HARTLEY, "The Employer's Duty to Supply Information to the Union", *Cornell Law Review*, Vol. 58, Nov. 1972, p. 28.

labour relations boards have been unable to define the exact meaning of "good faith". Furthermore, Canada has not gone as far as the U.S.A. in drawing the implications of good faith bargaining. For example, in a novel extension of the good faith bargaining test, the U.S. NLRB held in a recent case that an employer who offered a meagre, virtually negligible wage increase did so to induce employees to conclude that the union was of no use to them. "...No Canadian tribunal has yet had the temerity to test the good faith conduct of an employer by quantifying the wage offer."<sup>25</sup>

While the information provided to stockholders is available and could be useful to trade unions, it is not always the type of information that trade unions need. For example, the financial information submitted under the Corporations and Labour Unions Returns Administration (CALURA) is consolidated<sup>26</sup> before it is released to the public. It is therefore of limited value to unions. Banks, insurance companies, and regulated industries such as communications and transportation are exempt from filing returns. These corporations all file returns under other statutes which are confidential and therefore not available to the public<sup>27</sup>.

### Unions' Evaluation of Disclosure Legislation

Canadian labour leaders have identified the following major gaps in the corporate disclosure field:

1. The present legislation on corporate disclosure does not cover private companies.
2. Even in the case of public corporations "information required under a prospectus does not contain information of a non-financial nature that would injure the corporation's ability to raise capital, e.g., minority hiring practices, low wages, hazardous products, pollution, plant closures, etc.
3. "Financial disclosure alone, by its very nature, looks at past performance, not at future intent — and it is future corporate planning and decision-making which impacts so severely on trade unions and their members... It is necessary to have a regular and continuous flow of corporate information to trade unions and the broader community."
4. Canada has fallen behind the U.S.A. in the area of pension plan disclosure<sup>28</sup>.

<sup>25</sup> ARMSTRONG, T.E., "The Duty to Bargain in Good Faith: Definition and Remedy", *Canadian Business Review*, Conference Board of Canada, Ottawa, Vol. III, Summer 1976, pp. 35-37.

<sup>26</sup> "Corporate Disclosure", *op. cit.*, p. 38.

<sup>27</sup> *Ibid.*

<sup>28</sup> "Corporate Disclosure", *op. cit.*, pp. 38-39.

In a table prepared by Mr. Tony Wohlfarth for the Canada Department of Labour a comparison is made of the existing corporate disclosure provisions in Canada with an itemized list of disclosure recommendations contained in a Canadian Labour Congress policy paper on this subject. Existing legislation, together with an evaluation of the degree to which it conforms to the CLC's demands, is cited. Limitations to the coverage, timing, etc., are also noted. The findings from the table in the appendix are summarized as follows:

"Much of the information identified by the CLC is available on the Form 10-K, filed annually with the U.S. Securities and Exchange Commission. This report covers all companies whose shares trade on U.S. stock markets, including some of the larger Canadian companies. As a consequence, the available data is much more comprehensive for Canadian firms with U.S. interests.

— Information not available in any form includes:

a) information on a company's contracts with government, Crown Corporations, and subsidies received from these groups; b) output, productivity, utilization of productive capacity, value-added, statistics for (unorganized) office staff; also costing of social security and other fringe benefits.

— Information available in insufficient depth:

a) information on firm's future outlook e.g., long-term financing, plans for expansion; b) identification of competitors, and further disclosure on competitive practices; c) detailed management accounting information; d) in-depth organizational information, particularly for subsidiaries of foreign parents."<sup>29</sup>

In conclusion, the existing corporate disclosure information covers neither private corporations nor companies below a certain asset or revenue size. Generally speaking the information that is available is not of sufficient depth; it examines the past performance of a company but does not look at its future plans; therefore the information disclosed does not meet with the CLC requirements.

## **ARGUMENTS FOR AND AGAINST DISCLOSURE**

### **Arguments for Disclosure**

In recent years the free enterprise system has come under attack. This is partly due to a lack of accurate and adequate information on how the system actually operates. A policy of meaningful disclosure can illustrate the complexity of management's task, its general fairness in allocating scarce resources, and the role enterprises play in creating wealth for the whole

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<sup>29</sup> WOHLFARTH, Tony, *op. cit.*, pp. 16-17.

society<sup>30</sup>. According to the president of the Bank of America, "Unified commitment to greater disclosure will do more for corporate reputations than all the public interest advertising and public relations campaigns we could mount."<sup>31</sup>

Some employers believe that voluntary disclosure of company information to trade unions will yield positive benefits and that the provision of more information will promote a greater understanding of company problems such as the need for, and acceptance of, technological changes. Furthermore, it will help in clarifying bargaining objectives.

The disclosure of company information is also related to "Quality of Working Life" experiments, which, in North America, have been undertaken mostly at the initiative of management. In the last decade, a number of "Quality of Working Life" centres have sprung up all over North America. The objective of these centres is to contribute to the improvement of the quality of life at the work place by giving employees more involvement in, and responsibility for, their work environment.

Many union leaders in North America remain suspicious of the "Quality of Working Life" experiments and believe that these projects are manipulative management schemes set up to increase output without regard to the interest of employees. Others feel that if they are to participate with management on equal terms in these experiments, they need accurate, opportune, and complete information which will allow them to form an independent judgment on the merits of management's proposals, policies and decisions.

The Canadian trade union movement strongly favours greater disclosure of corporate information. The Canadian Labour Congress, in a policy statement on corporate disclosure, has argued that if national and multinational corporations are to be held accountable for their actions, disclosure of corporate financing, investments, pricing policies, and production planning are absolutely essential<sup>32</sup>. Trade unions also believe that greater disclosure of financial and non-financial corporate information is necessary for rational collective bargaining.

In the final analysis disclosure of information is perceived by both employers and trade unions as a potential tool for increasing their bargaining power. Consequently, when employers and unions argue for greater dis-

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30 SMITH, Robin, "Management Experts' Meeting of Information and Communications in the Firm", OECD background paper, Paris, OECD, July 1974, p. 14.

31 CLAUSEN, A.W., "Voluntary Disclosure, Someone Has to Jump into Icy Waters First", excerpts from a speech delivered in San Francisco, Jan. 1, 1976.

32 "Corporate Disclosure", *op. cit.*, p. 35.

closure, they often do so for different reasons. For example, proponents of disclosure from the employers' side tend to believe that it will lead to rational and objective bargaining. They claim that it will influence the behaviour of trade unionists and is likely to result in moderating some of their demands and attitudes. On the other hand, unions may support disclosure in the belief that it will redress the power imbalance and will enable them to bargain as "equal" partners. Furthermore, it will assist them in mapping out their strategy on issues, such as when management can least afford a strike, and it will force management to justify its decisions<sup>33</sup>. Some academics, such as John Crispo of the University of Toronto, support union demands for greater disclosure:

"Broadened information rights tend, in and for themselves, to foster a widened scope of bargaining. This link is likely to follow just as logically in North America as in Western Europe. Past North American notions about confidentiality of information and exclusivity of employer residual rights are bound to prove increasingly *passé* in any and all areas where vital employee interests pertaining to their income, security and working conditions are involved."<sup>34</sup>

### Arguments Against Disclosure

Other academics point out that financial data or economic variables can sometimes play, or seem to play, no role in some bargaining relationships. For example, in the U.S.A., between 1945 and 1962, labour agreements between employers and the West Coast Seafarers and Longshoremen's Union contained the best package (including highest wage and fringe benefits) obtained by unions on the West Coast, despite a sharp industry employment decline, severe competitive problems, and low profits<sup>35</sup>. Others have argued that in some industries, a company's financial and economic position has little relevance to the final negotiated settlement because the company usually follows the pattern of settlements established earlier by other union agreements.

Some lawyers and consultants assume that disclosure of economic and financial information will give unions too much bargaining power and is likely to result in costly pay and benefit packages for the employer<sup>36</sup>. Even some unions are concerned that the acquisition and use of company information may lead to union integration in the managerial control system.

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<sup>33</sup> JAIN, Hem C., *op. cit.*, p. 52.

<sup>34</sup> CRISPO, John, *Industrial Democracy in Western Europe: A North American Perspective*, McGraw Hill, Ryerson Ltd., 1978, p. 152.

<sup>35</sup> LEVINE, Harold M., *Determining Forces in Collective Bargaining*, New York, John Wiley and Sons Inc., 1966, p. 26.

<sup>36</sup> HILL, John W., "Facts for Collective Bargaining", *The Controller*, June 1958, p. 275.

Employers believe that most union negotiators lack expertise and training in financial accounting and economic matters. They argue that unless union delegates are in a position to fully understand all the implications of the data provided to them, it could result in misinterpretation and mistrust, which in the final analysis could damage the bargaining process itself. Many employers genuinely fear that the leakage of confidential financial and economic information in sensitive areas such as cost structure, pricing policies, and future plans would endanger not only the company's competitive position, but also its very survival.

The final argument put forward against disclosure is that it encroaches upon and restricts management's right to manage.

### PROBLEMS OF PRACTICAL APPLICATION

From the above discussion, one can clearly see that trade unions and employers have differing expectations of the need for, and the consequences of, greater disclosure. The concept of disclosure of company information rests on a number of assumptions. Consequently, problems may arise when a system of disclosure is implemented. In order to gain insight into these problems, it is important to examine the following aspects of information:

1. Behaviour of interested parties
2. Confidentiality of information
3. Preparation, presentation, and administration of information
4. Information users' training and education.

Most of the examples in this section are derived from this writer's study and observations of the extensive system of disclosure of information practiced in Western European countries.

#### Behaviour of the Parties

When discussing disclosure, people often assume that it is a rational, almost scientific concept of industrial relations, and that "facts" can bridge the gap between the goals and values of unions and those of management, two independent organizations with separate and partially incompatible goals. "Implicit in such a view is that information is accurate, objective and absolute. Not only can this be questioned, it is also unlikely that information however accurate will always be accepted or given its due weight."<sup>37</sup> Because collective bargaining involves gamesmanship, trade unions are not

<sup>37</sup> MARSH, Arthur and Roger ROSWELL, "A Question of Disclosure", as quoted in Hem C. Jain, *op. cit.*, p. 52.

likely to be constrained by the disclosure of facts, while discussing their demands, if they do not wish to be so. They would like to retain their freedom to manoeuvre and may accept or reject the "facts" as the situation warrants.

### **Confidentiality of Information**

There is a legitimate and even essential need for corporate secrecy in some areas. At a U.S. Senate commerce committee hearing, four areas where confidentiality of information is necessary were identified. It is necessary to protect incentives for innovation. Firms would be inclined to spend a great deal less time and money in developing new or improved products or better ways to produce old ones, if they knew that their competitors could have immediate access to the new ideas or products developed. There is also a need to protect the vigour and candour of intraorganizational discussions about corporate decisions. Information in the possession of a company includes much that bears on the privacy of employees, customers, and stockholders. Files and records of this sort need protection from disclosure unless it is specified by law. Finally, there are certain classes of information that if disclosed would prevent the economic game from being played at all. Competitive bidding, for example, could hardly work if each bidder knew the bidding plans of all other bidders<sup>38</sup>.

In Britain, Belgium, Holland, West Germany, and other European countries, there are legal provisions whereby employers are authorized to withhold certain information. The question as to what is confidential or where to draw the line is necessarily one which has to be answered and justified by management.

While management may decide as to what is private or confidential, the criteria on which such a decision is based has to be negotiated with the trade unions and agreed upon by both parties. The obligation of workers' representatives on joint decision-making bodies to keep the information secret creates a dilemma for the unions, i.e., "how can the rank and file employees participate in a meaningful way if the information given to a minority of them must be kept secret?"<sup>39</sup> The disclosure also creates a dilemma for management. Confidential information supplied by management could be used by unions to enhance their influence and power and even to achieve their political ends.

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38 STEVENSON, Russell B., Jr., "The Benefits of Disclosure", excerpted from a statement made at the hearings on Corporate Rights and Responsibilities of the U.S. Senate Commerce Committee, Washington D.C., June 1976.

39 BLANPAIN, Roger, "Provision of Information", as quoted in Hem C. Jain, *op. cit.*, p. 53.



### **Preparation, Presentation and Administration of Information**

Generally speaking, most companies with publicly owned shares provide their unions with a copy of their most recent annual reports. However, these reports are essentially historical documents which take a retrospective rather than a current of forward looking view. Trade unions and their representatives feel that they need information about the company's future plans and objectives so that they can make an appraisal of the factors associated with corporate strategic development. Furthermore, company reports are prepared primarily for shareholders. Trade unions need different categories, forms, and presentation of company information. The mere provision of corporate information which does not take into account the functional needs of its users, i.e., the unions and their representatives, does not lead to its most effective use. Company information is used not just by one but by a number of union functionaries for different purposes, such as collective bargaining, grievance processes, union-management committees, etc. In the future, such functions are likely to increase, and union functionaries will be asked to perform a greater role in areas such as work organization, profit sharing plans, and occupational pensions.

Not only the type of information disclosed, but also the timing of disclosure is critical. In many instances, information is given to workers when the decision has already been finalized. In matters involving changes and innovations affecting the majority of the work force in the enterprise, provision of information in the formative stage of decision-making can be helpful to employees and their representatives. In the early stages, attitudes and opinions on both sides can be accommodating and proposals can be easily altered. Decisions arrived at in this manner can be implemented more easily.

Union leaders also believe that the mandatory disclosure of almost all management accounting data in some industries as required by government regulatory bodies of the federal government in the U.S.A., is another highly desirable approach to the disclosure of information. The airlines and trucking industries and their respective relationships with the Civil Aeronautic Board and the Interstate Commerce Commission are the clearest example of this situation. In both cases, affected companies are required to file detailed quarterly accounting reports that give a broad picture of their operations.

### **Information Users' Training and Education**

Disclosure of company information will not be of much use in itself unless the workers and their representatives have the ability to understand, evaluate, and use it. Therefore, any consideration of the improvement of

the preparation, presentation, and administration of information has implications for training and education of the following groups:

1. management personnel
2. employee representatives and union functionaries
3. rank and file members of the unions.

Education and training include not only the acquisition of economic and technical skills, but also the development of effective communications skills.

#### TRAINING FOR MANAGEMENT PERSONNEL

In an organization, individuals occupying key positions in the communications system do not always have innate communications skills. They need to develop these skills, particularly in areas where they are not always highly trained, such as financial accounting. Training for management personnel at all levels is primarily the responsibility of management.

#### EDUCATION FOR EMPLOYEE REPRESENTATIVES AND UNION STAFF

In recent years, the question of access to information and training for the interpretation and use of such information, has assumed a great deal of importance for trade union officials who are involved in collective bargaining. For example, in Britain and Italy, the subject matter of collective bargaining has extended from the traditional concerns with wages and working conditions, etc., to the role of workers and their representatives at the work place and to other areas. In recent years, British unions, in view of their opposition to plant closures, have asked the employer not only for financial information, but also for a "social cost-benefit analysis" in the handling of such situations.

Unions are realizing that, in order to cope with such complex situations, workers and their representatives need multidisciplinary education. An outstanding recent example has been the British Broadcasting Corporation series on "Productivity Bargaining", a form of collective bargaining in which pay increases are related to changes in the use of resources and labour practices designed to increase productivity. At the suggestion of the Trade Union Congress, the series was directed at the shop stewards and the role they played in handling productivity bargaining sessions.

The British Trade Union Congress is also concerned with the introduction of new methods of computer controlled production planning systems and data processing which offer prospects of increased productivity. It argues that such new methods of production be developed with the prior

agreement of both unions and management and that training courses be set up for the systems' shop stewards<sup>40</sup>.

The primary responsibility for the training of employees' representatives lies with trade unions. Many trade unions do undertake some training of their officials. However, there are financial constraints which limit the trade unions' capacity to meet educational demands.

#### TRAINING FOR RANK AND FILE

It has been suggested that the rank and file's lack of knowledge and understanding of basic economic concepts might be a factor "retarding the more complete organization of workers into trade unions". The lack of economic education among organized workers could lead to decisions being taken on emotional grounds, such as the refusal by the rank and file to ratify collective agreements reached by their union leaders after a careful analysis of the economic position of the company and the industry.

One of the problems here is the release of rank and file from work for training purposes. Access to paid educational leave could greatly facilitate the training and education of rank and file employees as well as that of their representatives. In a study on "Paid Educational Leave in Europe: its Implications for Canada", published in 1978<sup>41</sup>, this writer argued that trade union education was likely to increase in importance when unions gained a greater foothold in major industries in the private sector and if and when Western European style of "Workers' Participation" became widespread and accepted throughout the industrial world. Interestingly enough, most of the conclusions of my study on paid educational leave, which was submitted to the Canada Department of Labour in 1978, coincide with the recommendations of a report of the Canadian Commission of Inquiry into Educational Leave and Productivity released in June 1979<sup>42</sup>.

#### NEED FOR A COMPANY POLICY

Before any organization can develop an information policy for employees and their representatives, it needs to consider the objectives of dis-

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<sup>40</sup> "The Trade Union Role in Industrial Policy", excerpts from Trade Union Congress, *Report of the Conference of Affiliated Unions*, Oct. 31, 1977.

<sup>41</sup> JAIN, Hem C., "Paid Educational Leave in Europe: Its Implications for Canada", *Industrial Relations*, Vol. 33, No. 3, 1978, pp. 499-500.

<sup>42</sup> Labour Canada, Commission of Inquiry on Educational Leave and Productivity, *Report*, Ottawa, Queen's Printer, June 1979, pp. 220-235.

closing information and the means to achieve these objectives. In other words, it will have to do a cost-benefit analysis in the light of its own internal situation as well as the pressures from outside. The company may restrict itself to fulfilling minimum legal requirements or statutory guidelines, or it may adopt a policy of voluntary disclosure, and/or it may negotiate an "information agreement" with trade unions.

### **Voluntary Disclosure**

There are some companies which have voluntarily devised schemes for the provision of information to their employees in the belief that such schemes could lead to a better understanding of company aims and objectives and thereby may increase employees' identification and commitment to its activities and objectives.

In the U.S.A., a substantial majority of annual reports now include information on sales and earnings by product line and on effective income tax rates. "More than a third show foreign sales and earnings and losses. More than three quarters offer comparative financial data going back ten years."<sup>43</sup>

In Canada, the Cyprus Anvil Mining Corporation distributed a twenty-eight page report to its employees regarding such issues as the condition of the company's markets; new developments in exploration; outlooks for the future; breakdowns of the sales dollar into costs of salaries, wages, benefits, supplies services; and other items such as comparative charts of expenses and profits for a three year period. Another important feature is that the data put forward in a manner that can be easily understood by laymen<sup>44</sup>.

The initiatives taken by some companies in the U.S.A. and by some Canadian organizations with regard to voluntary disclosure are indications that there is a degree of acceptance among employers in North America for the concept of disclosure of company information, but it will take some time before it gains wide acceptance and credence among all interested parties. Nevertheless, some unions see the annual report issued by the Cyprus Anvil Mining Corporation to its employees as a technique to influence labour negotiations in collective bargaining. The "employee reports" also have inherent limitations. Such reports are issued annually and comprise information selectively presented by management. They are essentially one-way communications exercises, that provide recipients with neither an opportunity to question nor to answer back.

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<sup>43</sup> CLAUSEN, A.W., *op. cit.*

<sup>44</sup> "Company Reports for Employees", *Financial Times of Canada*, March 20-21, 1978.

The most direct and immediate route for communicating relevant information effectively would appear to be the adaptation of a company's existing information/accounting system, which is designed to serve management's internal needs. Because the relevant information is already collected and prepared for management's use, its reliability (due in part to its regularity and consistency) is greatly enhanced in employees' eyes and such information can be communicated to unions and their functionaries at little or no cost.

### **Information Agreements**

It is in the interest of both employers and trade unions to negotiate an information agreement which will systematize the information requesting and disclosure process. These agreements should be designed and operated at the bargaining unit level. As the company adopts a general information policy, the individual information agreement will become an element in the company-wide framework. In the United Kingdom, both the Confederation of British Industries and the Trade Union Congress have such agreements.

The information agreement, to be effective operationally, needs to take into account the following points. According to the Advisory Conciliation and Arbitration Service (ACAS) of the United Kingdom, this agreement should incorporate the following:

1. Specific itemized list of information to be disclosed
2. Period of advance notice by trade unions for requests of relevant information for collective bargaining purposes
3. The level or levels (department, plant, division or company) at which disclosure may be requested and information obtained. Names and/or titles of trade union representatives authorized to request information and company officials to whom request should be made
4. Speed with which the company should provide information and the procedure for keeping the fast changing information up to date without being asked
5. Frequency and methods of disclosure; the form and style in which information is to be presented
6. Types of information a company does not have to disclose on grounds of confidentiality
7. The procedure for handling disputes arising over the interpretation of the clauses in the information agreement.

The last two points have aroused a great deal of controversy. However, this writer believes that despite the problems which attend disclosure of certain types of information, a joint agreement can be reached between a company and trade unions on confidentiality of information. For example, in return for a management undertaking to release certain types of information in confidence to selected union officials, the union might agree to restrict wider dissemination so that it may not fall into the hands of competitors.

Although a joint agreement may be reached between a company and trade unions on precisely what is to be disclosed, occasionally there will be disagreements about the interpretation of clauses on disclosure. Therefore, appeal mechanisms and arbitration procedures have to be considered. Once the parties have succeeded in concluding an information agreement, disputes arising over the interpretation and administration of such an agreement could be entrusted to the government conciliation and arbitration machinery for final resolution. We must note, however, that in the absence of any specific legislation or guidelines on disclosure, unions will experience difficulties in negotiating information agreements because labour relations boards will not go beyond the narrow limits of the "good faith bargaining" clause, howsoever defined.

## GOVERNMENT INITIATIVES

Governments can take certain initiatives to increase the flow of corporate information to trade unions and their representatives for industrial relations purposes. There are arguments both for and against the establishment of minimum legislative standards of corporate behaviour with regard to the disclosure of information. Experience indicates that "in the long run, a law certainly creates a climate of management opinion more broadly sympathetic to the principles of disclosure than is usually the case in countries where no law on the subject specifically exists."<sup>45</sup> However, we also know that whatever measures are taken to compel the employer to conform to the law, there will always be recalcitrant employers who will not conform to minimum standards of disclosure. Furthermore, European experience indicates that legislation alone cannot ensure adequate corporate information for industrial relations purposes<sup>46</sup>. However, in the opinion of this writer, governments can and should take initiatives in the field of legislation, collection and distribution of information, further research, and education and training.

<sup>45</sup> SMITH, Robin, *op. cit.*, p. 13.

<sup>46</sup> JAIN, Hem C., "Information, Training...", *op. cit.*, p. 50.

## Legislation

In the Canadian context, the federal and provincial governments could introduce new legislation under the aegis of labour codes, requiring the employer to provide certain information to trade unions and their representatives. Such legislation could either be specific, i.e., an itemized checklist, as exemplified by the document prepared by the Canadian Labour Congress, or it could be in the form of a guide similar to the British ACAS code of practice under the *Employment Protection Act* (1975). The latter flexible approach allows for an administrative tribunal, similar to labour relations boards, to rule on specific cases.

The present capital market disclosure legislation could be amended to conform with the needs of trade unions and their representatives. Options may include:

1. Enlarging the non-confidential portions of CALURA, to make it more useful to outsiders, based on the SEC model in the U.S.A.
2. Expanding the coverage of the *Canada Business Corporations Act* to private companies regardless of their size, and encouraging uniformity in parallel provincial legislation<sup>47</sup>. Such information could be reported on a standard comprehensive form and should follow the government approved accounting practices and guidelines.

## Collection and Distribution of Information

When trade unions demand greater disclosure of information, it is not quite clear whether they are aware of information that is already available because it is in the public domain. It has already been pointed out that some of the information identified by the Canadian Labour Congress in its policy paper on corporate disclosure is available for publicly held companies. What is needed then, is an educational campaign to make people aware of the information that is already available, and how they can get it. It is conceivable that union functionaries do not have easy access to corporate information because this information is available under various pieces of legislation and is scattered in eleven jurisdictions. These jurisdictions require varying degrees of corporate disclosure. It is in this context that the Collective Bargaining Information Centre (CBIC) of the Department of Labour could play an important role. It could pool all information on corporations in one central place and then make it available to the interested parties for indus-

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<sup>47</sup> WOHLFARTH, Tony, *op. cit.*, p. 8.

trial relations purposes. CBIC could be empowered to gather confidential corporate information from other government departments who at present hold it. If necessary, CBIC could collect information from the corporations directly. It should be pointed out that this data bank should consist of publicly available, but not readily accessible, information. Interested parties must show evidence that they need information for industrial relations purposes.

It was pointed out earlier that company information is used by a number of union functionaries for different purposes. Therefore, it is imperative that unions and their representatives have a clear idea of what information they want, and why they need it. Unions should improve research capabilities as an act of good faith. They should develop coherent policy objectives and priorities together with consciously adopted strategies toward their achievement. They may need the assistance of experts and specialists, not only in critically evaluating company information, but also in generating their own independent supply of information. Similarly, employers must examine their role as it relates to their own unions' demands for greater disclosure of information.

#### **Need for Further Research, Training and Education**

The Federal government could sponsor a survey of important Canadian companies in the public and private sector in order to ascertain the extent to which individual companies provide financial and non-financial information to their bargaining agents and other union functionaries. A parallel survey of important trade unions could be undertaken to find out what specific financial and non-financial information unions need for industrial relations purposes. Such surveys would help to raise the consciousness of both the employers and trade unions on the issues concerning disclosure of information, and would help them to crystallize their thinking.

As a follow up, educational workshops and seminars could be held in various parts of the country to provide a forum for enlightened employers who have voluntarily provided the necessary company information to their unions. Union and community leaders should also be invited to such workshops. The resulting publicity would help to mould public opinion and create a positive attitude toward the disclosure of corporate information. Such educational seminars could also provide feedback useful to government in developing minimum legislative standards and guidelines.



## SUMMARY AND CONCLUSION

There seems to be general agreement among trade unionists that greater disclosure of company information will improve labour management relations and in the long run will result in a more rational bargaining process.

Experience with the disclosure of company information in Belgium, France, Germany, and Britain indicates that the passage of legislation in this regard is not enough. It needs to be complemented by a positive and meaningful information policy at the company level. It is important to involve the unions and their representatives from the very beginning and to seek their cooperation throughout the process of establishing the information policy and system. Problems concerning confidentiality; timing of information releases, i.e., its frequency, regularity and consistency; the form in which it is presented; etc., should be amicably negotiated between the employer and trade union representatives. The chances of negotiated information agreements are limited if trade unions and their representatives harbour suspicions about the employers' basic attitudes toward disclosure. A company information policy is effective to the extent that it is perceived by employees and their representatives as a product of their joint consultation and negotiations. Trade unions and their representatives also have an obligation to develop a coherent information policy as to what information they need and why they need it. They must equip union functionaries with necessary skills and abilities to enable them to evaluate and use the company information.

In the opinion of this writer, the three approaches: 1) voluntary disclosure 2) negotiated information agreements and 3) minimum legal requirements or statutory guides for disclosure discussed above are not mutually exclusive. Companies, unions, and governments, respectively, should explore these approaches. However, prior to the introduction of legislation, it would be advisable for the government to start with the dissemination of the information which is already available; to sponsor surveys of companies in the private and public sectors and to conduct workshops to educate the public on the issues of disclosure of information.

## La divulgation aux syndicats de renseignements sur l'activité des entreprises

Des groupes de pression, comme les consommateurs et les syndicats, ont manifesté beaucoup d'intérêt pour tout ce qui touche à la divulgation de l'information en général. En matière de relations de travail, la nécessité d'informer le public est reconnue depuis fort longtemps. Mackenzie King en faisait état à la fin de la première guerre mondiale. À la fin de la décennie 1970, de nombreux syndicats ont fait des représentations aux gouvernements en ce sens. Ils se plaignaient qu'ils ne connaissent pas la situation financière des entreprises non plus qu'ils ne pouvaient être assurés de la véracité des statistiques publiées relativement aux profits et à la productivité.

Le but de l'article, si l'on admet qu'il n'y a que très peu de renseignements fournis aux syndicats par les entreprises en Amérique du Nord, et encore moins au Canada, est de combler ce vide en étudiant la législation et les pratiques des entreprises relativement à la divulgation de l'information, en énonçant les arguments favorables ou opposés à la divulgation, en exposant les problèmes que de telles mesures soulèvent, en faisant valoir la nécessité pour les entreprises d'avoir une politique en cette matière et en indiquant les initiatives possibles de la part des gouvernements.

L'intérêt pour cette question ressort d'abord de la crainte ressentie par les syndicats face à la tendance à la concentration des pouvoirs économiques des entreprises entre les mains des multinationales alors que le gouvernement a failli à la tâche d'obliger ces entreprises à répondre des décisions qui peuvent avoir un effet néfaste sur l'emploi et l'économie canadienne dans son ensemble. Il ressort aussi de l'expérience passée en matière des mises à pied et de réduction de personnel. Aussi, les syndicats souhaiteraient-ils avoir une information systématique au sujet des changements projetés dans la main-d'œuvre de manière à pouvoir influencer les décisions administratives. Les changements technologiques, l'automation, les déplacements de production d'une usine à l'autre, les transferts de propriétés sont autant de transformations qui peuvent avoir une influence profonde sur la vie personnelle des travailleurs.

D'une façon générale, la divulgation de l'information est perçue tant par les syndicats que les employeurs, comme un outil destiné à renforcer leur pouvoir de négociation. Il ne s'agit pas tant de savoir si l'information devrait jouer un rôle dans la négociation collective que de vouloir pour toutes les parties un accès égal à l'information. Pour les syndicats, la divulgation veut dire que les employeurs possèdent certains renseignements qu'ils ne connaissent pas et concernant lesquels ils voudraient obtenir des explications. Le Congrès du travail du Canada a identifié plusieurs catégories de renseignements qu'il estime nécessaires aux syndicats comme le statut de l'entreprise, sa situation de concurrent sur les marchés, sa production et sa productivité, sa structure financière, son budget, ses profits pour l'avenir, son organigramme, etc., mais ce n'est pas tant l'abondance des données qui compte que les renseignements utiles à la négociation et à l'administration des conventions collectives.

Jusqu'ici, au Canada, la divulgation d'informations imposée aux entreprises a eu principalement pour objet de permettre aux actionnaires et au public de prendre des décisions sages dans le domaine des investissements, mais cette législation ne

s'applique pas aux compagnies privées qui forment tout de même le quart de toutes les entreprises importantes du pays. Aucune loi, par ailleurs, n'impose aux employeurs l'obligation de renseigner les syndicats, si ce n'est par le biais de l'obligation de négocier de bonne foi. Aux États-Unis, on a interprété la loi de façon que le refus d'informer les syndicats était considéré comme une violation de cet impératif législatif, mais il s'ensuit que les entreprises, qui sont financièrement faibles, s'empressent d'ouvrir leurs livres et servent ainsi leurs causes, tandis que les compagnies financièrement fortes ne crient pas à la pauvreté et elles échappent à l'obligation d'ouvrir leurs livres.

Il en va autrement au Canada. Le *Code canadien du travail* stipule bien que tout employeur doit fournir au Ministre du travail les renseignements se rapportant aux salaires de ses employés, à leur horaire de travail, aux congés et aux vacances. D'autre part, dans les législations des provinces, il est prescrit que les employeurs et les syndicats doivent négocier de bonne foi, mais, on a été jusqu'ici incapable de définir exactement le sens de "bonne foi". Aucun tribunal canadien n'a encore eu la témérité d'éprouver la conduite d'un employeur en quantifiant l'offre salariale.

Même si l'information fournie aux actionnaires peut être utile aux syndicats, ce n'est pas toujours de ce genre de renseignements dont ils ont besoin. En règle générale, cette information n'est pas assez détaillée; elle fournit surtout des indications sur le passé de l'entreprise, mais elle ne contient que peu de choses touchant son développement et ses projets pour l'avenir.

S'il y a, par ailleurs, des arguments favorables à une certaine diffusion de l'information aux syndicats, d'autres arguments militent au contraire. Et ceci s'applique tant aux employeurs qu'aux syndicats. À une époque où la libre entreprise est fortement attaquée, il peut y avoir avantage pour les employeurs à la faire connaître mieux et plus profondément à leurs salariés et au public en général, de faire ressortir la complexité des tâches qu'il lui faut assumer ainsi que le rôle qu'elle joue dans la vie sociale. De plus, pour les employeurs, la divulgation de certains renseignements aux syndicats peut favoriser l'entente et la compréhension, clarifier les objectifs de la négociation. Elle permet encore d'exposer publiquement les projets relatifs à l'amélioration de la qualité de la vie en milieu de travail. Quant aux dirigeants syndicaux, ils estiment qu'une diffusion plus complète de renseignements de nature financière ou autre est nécessaire à une négociation collective objective et rationnelle. En résumé, les employeurs considèrent que la diffusion de l'information est de nature à influencer le comportement des salariés, à modérer leurs exigences. Pour leur part, les syndicats pensent qu'une meilleure information permettrait de redresser la balance du pouvoir en faisant des partenaires égaux.

Toutefois, tout le monde est loin de partager ce point de vue optimiste. Pour certains spécialistes des relations professionnelles, les questions financières et économiques n'ont que peu d'influence sur le déroulement des négociations. Tandis que pour d'autres, la diffusion de renseignements donnerait un pouvoir de négociation trop considérable aux syndicats. Nombre d'employeurs croient que les négociateurs syndicaux manquent de l'expérience et de l'entraînement nécessaires pour bien interpréter les questions de comptabilité et de finance. Ils craignent aussi que la divulgation de renseignements d'ordre économique et financier mette en danger la position concurrentielle de l'entreprise et même son existence.

En résumé, on voit que les syndicats et les employeurs, même lorsqu'ils sont d'accord sur la nécessité de diffuser de l'information, recherchent des fins différentes sinon opposées. C'est pourquoi il faut tenir à la fois compte du comportement des parties, du caractère confidentiel de certains faits ou de certaines données, du choix de l'information, de sa préparation, de sa présentation, de l'utilisation que l'on peut en faire, des personnes à qui elle doit être divulguée, des fins auxquelles elle peut servir.

Comme certaines entreprises diffusent volontairement des renseignements à leurs employés et aux représentants syndicaux, il serait utile et intéressant de négocier des ententes à ce sujet. Ces accords pourraient porter sur les points suivants: la liste des renseignements à donner, le moment où ils devraient être fournis, le niveau de l'entreprise qui se chargerait de la diffusion, la fréquence de l'information, le type de renseignements qu'on garderait confidentiels, la mise en place d'un mécanisme qui permettrait de régler les différends en cette matière.

De leur côté, les gouvernements devraient prendre certaines initiatives législatives et rendre obligatoires des mesures qui obligerait les employeurs à fournir aux syndicats et à leurs représentants certaines informations utiles dans la négociation collective.

On peut conclure que, d'une façon générale, les syndicats favorisent une plus grande diffusion de l'information et que cela serait de nature à améliorer les relations professionnelles. Les employeurs se montrent beaucoup plus réticents. L'expérience des pays européens indique qu'il ne suffit pas d'adopter des lois cependant. Mieux vaut que la diffusion de l'information se fasse sur une base volontaire. Aux employeurs, il importe de rappeler qu'une politique de divulgation de l'information ne saurait être efficace que dans la mesure où elle est perçue par les employés et leurs représentants comme le résultat de la consultation entre les deux partenaires. Aux syndicats, il s'impose de prendre les moyens nécessaires pour évaluer objectivement les renseignements dont ils disposeront.

Trois conditions sont nécessaires pour qu'une telle politique réussisse: la divulgation doit se faire sur une base volontaire; il faut que la diffusion des renseignements soit établie à la suite de négociations entre les parties; il importe d'adopter certaines dispositions législatives qui mettent à la portée des syndicats les renseignements déjà disponibles.